

tariff permits Springwich to change its billing increment somehow requires such a change. As the Resellers have good reason to know, that is not what the Department approved, nor is it what the tariff provides. Indeed, Mr. Luis Escobar testified that he was personally advised in writing by then-Chairman Leonhardt, that the 1-minute billing increment used by Springwich is not only authorized by the Department but is appropriately cost-based. See LF #24.

In making this argument, the parties have yet again demonstrated the gossamer-thin substance of their complaints. Clearly, they cannot hope that the FCC will find it persuasive that Springwich's actions in conformance with its tariff somehow show a history of discriminatory or anti-competitive practices. By raising this issue as a basis for an FCC petition therefore, the Resellers again criticize the Department's prior decision and are using this alleged flaw as the basis of their claim for continued regulation of the wholesale carriers.

(2) Springwich's tariff provides that bills are due when rendered and that interest will be charged on unpaid balances at a rate of 1 $\frac{1}{4}$ %.<sup>32/</sup> The Resellers nevertheless also allege that the interest charged by Springwich in conformance with its tariff is discriminatory in that interest is charged on all past due

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<sup>32/</sup> *Southern New England Telephone Company - Tariff Filing to Provide Bulk Domestic Public Cellular Radio Telecommunications Service*, Docket No. 84-08-16, (January 16, 1985) at 6 (approving late payment charge); *Springwich Tariff*, Part 1, Sheet 6, Section A.2.f.

amounts, including past due interest payments. Reseller Br. at 29. Again, unless the Resellers are challenging the reasonableness of the Department's prior decision, it is difficult to understand how an interest practice approved by the Department could be considered discriminatory. Application of the policy in a non-discriminatory manner to all past due accounts, and consistent with the manner in which interest is typically calculated, plainly refutes the Resellers allegation that this practice could form a basis for a petition to the FCC based on discriminatory or anti-competitive practices.

#### IV. THE DEPARTMENT HAS APPROVED SPRINGWICH'S RATES

##### A. The Department has Concluded Previously That Springwich's Volume Discount Rate Structure is Equitable and Non-Discriminatory

Like many other types of businesses, both in and outside of the telecommunications industry, Springwich has implemented a wholesale rate structure that provides an incentive for resellers to grow their subscriber base. Yet even though this volume discount structure applies to all resellers, and indeed was supported by a member of the Resellers Coalition, Connecticut Telephone & Communications, Inc. ("Connecticut Telephone") in DPUC Docket No. 87-10-23,<sup>33/</sup> the Resellers in this proceeding

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<sup>33/</sup> Re SNET Cellular, Inc. at 534-35 ("In fact, one customer, Connecticut Telephone & Communications Inc., in a letter to the Department, supported Springwich's proposal by stating that [the] volume discount will allow greater flexibility to control and (continued...)

claim that the volume discount rate structure in Springwich's and Metro Mobile/BAM's tariffs are discriminatory. Reseller Br. at 27; see Appendix at A-20 - A-22.

Yet again, the Resellers attempt to rehash old arguments and to quarrel with the Department's earlier decision. Significantly, the Resellers fail to mention that the Department has addressed and rejected this same challenge in two prior dockets. In each, the Department unequivocally determined that Springwich's volume discount rate structure is both equitable and non-discriminatory, and that Springwich has not engaged in abusive pricing practices.<sup>24/</sup> In fact, in approving the volume discount rate structure, the Department specifically rejected a reseller argument that the volume discount structure was "skewed so that only one reseller (i.e. SNET Mobilecom) can benefit from the two highest discount bands," stating that

[t]he Authority believes that all resellers including SNET Mobilecom will benefit from [Springwich's] proposal. The proposed tariffs in our opinion are nondiscriminatory and equitable.<sup>25/</sup>

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<sup>23/</sup> (...continued)

manage costs, provide it with the ability to increase customer bases through innovative pricing plans, and allow each reseller to better position itself against heavier competition.")

<sup>24/</sup> *Id.*; *Forbearance Decision* at 6-7.

<sup>25/</sup> *Re SNET Cellular, Inc.* at 534-35; see also *Application of Metro Mobile CTS, Inc. - Revision to Wholesale Cellular Mobile telephone Services Tariff*, DPUC Docket No. 88-11-26, at 5-6 (approving volume discounts) (emphasis in original).

As recognized by the Department at that time, and by the FCC the volume discount rate structure does not prevent resellers from accruing equal discount rates for equal levels of service subscription.<sup>36/</sup> Indeed, the testimony in this proceeding by Mr. McWay of Connecticut Telephone demonstrates that the volume discount did just what the Department (and reseller Connecticut Telephone) had expected with respect to demand stimulation, since there are now two resellers within the top two discount tiers, and multiple resellers are eligible, and indeed are receiving, volume discounts under the Springwich tariff. Tr. at 889; Springwich TE-17-05.

**B. The Department Consistently Has Approved  
Springwich's Tariffs**

The wholesale cellular carriers' rates for service are tariffed pursuant to the regulatory requirements of the Department. Springwich's tariff, which contains rate bands specifying a minimum and maximum rate range and a price list within that range, have consistently been approved by the Department as fair, reasonable, not unduly discriminatory, and consistent with the Department's requirements.<sup>37/</sup> In addition,

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<sup>36/</sup> Resale Policy Order at 1724 (FCC resale policy requires that any volume discounts available to cellular's large retail customers must be available on same terms and conditions to other resellers).

<sup>37/</sup> Southern New England Telephone Co. Tariff Filing to Provide Bulk Domestic Public Cellular Radio Telecommunications Service, Docket No. 84-08-16, at 16; Re SNET Cellular, Inc., at 540; Forbearance Decision at 7, 11; Application of SNET For Approval  
(continued...)

the tariff changes that Springwich has made have consistently resulted in decreased wholesale rates for resellers. See Springwich TE-17-11, Attachment B. Springwich has never requested a rate increase from the Department but rather has reacted to market conditions, including competition from Metro Mobile/BAM and the dynamic needs of cellular end users, in seeking rate approval for rate reductions.

1. **Springwich's and Metro Mobile/BAM's Rates of Return Demonstrate That The Department Was Correct In Its Approval Of The Carriers' Rates**

Despite the continuing attempts by the Resellers to jury-rig their accounting methods to reach a result they find acceptable -- an effort which has extended into the submission of yet another set of calculations in their Brief after the record closed -- the reasonableness of Springwich's and Metro Mobile/BAM's current rates is further confirmed by the rates of return of each carrier, as calculated using the actual (and in Springwich's case, fully audited) financial results of the carriers.<sup>38/</sup> See Appendix at A-23. Using the actual data

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<sup>37/</sup> (...continued)  
*of Proposed Tariff Concerning An Attempt Charge for Incomplete Calls, Docket No. 86-03-12, at 3.*

<sup>38/</sup> The financial data for Springwich and Metro Mobile/BAM was provided on a proprietary basis, and has not been provided to employees of either company, including inside counsel. Therefore, any reference to Springwich's review of Metro Mobile/BAM proprietary data herein pertain solely to the review of that information by Springwich's outside counsel pursuant to the Protective Order. As Springwich does not intend to refer to (continued...)

provided by the wholesale carriers without manipulation and consistent with the manner in which the Department itself calculates the rate of return for the Southern New England Telephone Company, no party disputes that the rates of return are eminently reasonable, even by the Resellers own standard of approximately 15%. Reseller Br. at 11; LF #39; LF #41. Moreover, they are reasonable as defined by the Department in its 1985 decision approving Springwich rates which were anticipated to result in a 19.7 percent rate of return.<sup>39/</sup>

As discussed in Springwich's Initial Brief, only by sheer smoke and mirrors were the Resellers' able to produce returns that justify their case for continued regulation.<sup>40/</sup> Indeed, only by such astounding (and improper) sleights of hand as the wholesale substitution of Metro Mobile/BAM expense data into the audited Springwich financial results, the exclusion of construction work in progress ("CWIP") from each company's net investment, the use of a manufactured tax rate bearing no relationship to the actual tax rate set forth in the Annual Report of Springwich's parent company, and other creative

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<sup>38/</sup> (...continued)  
specific proprietary information in this Reply Brief, it is not filing separated protected (i.e., redacted) and public versions.

<sup>39/</sup> Southern New England Telephone Co. - Tariff Filing to Provide Bulk Domestic Public Cellular Radio Telecommunications Services at 4.

<sup>40/</sup> See Springwich Br. at 33-35; Metro Mobile/BAM Brief at 39-46.

techniques bearing no relation to USOA, Generally Accepted Accounting Principles ("GAAP"), CAM or any other acceptable accounting methodology or practice, were the reseller witnesses able to create a rate of return they could label unreasonable. The Department has considerable experience in rate regulation, and Springwich is confident that it will see through this transparent effort, look to the actual financial results, and draw the correct conclusion that the rates of return of both Springwich and Metro Mobile/BAM demonstrate the existence of a competitive market and, as Congress recognized, that rate regulation may therefore appropriately be relinquished at this time.

**2. Predictions Of A Future Rate  
Decrease Do Not Support A Finding  
That Current Rates Are Unreasonable**

The Department previously has analyzed the wholesale cellular service rates of Springwich and Metro Mobile/BAM and found that they reflect prudent costs and market conditions.<sup>41/</sup> Nevertheless, the Resellers and AG suggest that, since the carriers predict that rates will drop by about 25 percent over the next five years, the Department should conclude that the rates need to continue to be regulated today. See Appendix at A-28. As a threshold matter, these parties fail to inform the Department that the FCC fully expects that the rates for cellular service will decline as new entrants emerge in the future, and

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<sup>41/</sup> *Id.*; Forbearance Order at 7.

yet has determined to de-tariff cellular rates today.<sup>42/</sup> The FCC expects that:

the new PCS industry is expected to compete with the existing cellular and private advanced mobile communications services, thereby yielding lower prices for existing users of those services.<sup>43/</sup>

Therefore, the Resellers' and AG's attempt to paint the witnesses' rate projections as some sort of admission against interest, and to suggest that the Department base a petition on their conclusion, falls flat. It is universally accepted that rates will most likely fall in the future, and yet the FCC has not made -- and therefore is unlikely to make -- the quantum leap suggested by the Resellers and AG to conclude that this projection means that rates are unreasonable today and that rate regulation is necessary. The argument clearly will not be persuasive as a support for continued rate regulation and is yet another claim by the Resellers that the Department has not effectively regulated the carriers in the past.

Finally, while the Resellers point to the witnesses' conclusions, they ignore the factors that support the projections of future price reductions, which include a number of variables,

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<sup>42/</sup> See, e.g., *In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Notice of Proposed Rulemaking and Tentative Decision*, 7 FCC Rcd. 5676, 5690 (1992) ("PCS Notice"), *Second Report and Order*, 8 FCC Rcd. 7700, 7710 (1993) ("PCS Second Report and Order").

<sup>43/</sup> *PCS Second Report and Order*, 8 FCC Rcd. at 7710.

some of which are not yet operative in the Connecticut marketplace today. First, all of the witnesses asserted that the aggressive competition which currently exists between the wholesale cellular carriers would continue.<sup>44/</sup> Second, the witnesses assumed that cellular wholesale service will no longer be regulated, and that the attendant costs and restraints on service innovation would thereby be eliminated.<sup>45/</sup> Third, as recognized by the Resellers, the witnesses' forecasts assume an increase in the amount of spectrum allocated for CMRS and that the number of mobile service providers providing CMRS will expand dramatically.<sup>46/</sup> This additional entry is expected to accelerate penetration of all CMRS services in the state of Connecticut and lead to declining prices. See LF #3. Fourth, the investment by

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<sup>44/</sup> Tr. at 1639-40. Indeed, as the Department is no doubt aware, since the hearing Bell Atlantic has announced an agreement with NYNEX to merge their cellular operations, creating a huge combined cellular operating territory stretching from Maine to South Carolina and including Connecticut. See, e.g. *Bell Atlantic and Nynex are Planning to Combine Cellular Phone Businesses*, Wall St. J., June 30, 1994 at A1, A4; *2 Phone Concerns Seeking to Merge Wireless Services*, New York Times, June 30, 1994 at A1, D2. As the record shows, the scope of Bell Atlantic's existing cellular operations already makes it a formidable cellular competitor in Connecticut, with substantial economies of scale. Tr. at 1645; Springwiche Br. at 29. The contemplated merger can only magnify those factors and in fact is similar to one of Mr. Brennan's proprietary forecast scenarios. See LF #3.

<sup>45/</sup> Tr. at 411, 415, 1241-42. Dr. Hausman testified that he has developed a regression model that demonstrates that cellular rates are 5% to 15% lower in states that forbear from regulation of cellular services. Tr. at 411.

<sup>46/</sup> See Tr. at 489.

Springwich in digital technologies is expected prospectively to contribute to a continuing decline in subscriber rates. Tr. at 1519-20. The record in this proceeding therefore does not support the leap of faith made by the Resellers and AG from the forecasts made by the carriers based on *future* market conditions to their conclusion that those forecasts ought to apply to the vastly different market conditions that characterize the market today.

So, consistent with their recurring theme, once again the Resellers would have the Department petition the FCC on the basis of a conclusion that is contrary to the Department's own approval of the tariff and is not supported by the evidence. As discussed above, the Department has approved Springwich's and Metro Mobile/BAM's tariffed rates. The fact that witnesses for both companies predicted that rates would drop over the next five years as a result of a number of factors does not, as the Resellers suggest, indicate that the Department was wrong.

V. ARGUMENTS SEEKING A PETITION BASED ON ACTIVITIES UNREGULATED BY THE DEPARTMENT SHOULD BE REJECTED

As Chairman Benedict recognized in excluding discovery sought and evidence offered by the Resellers, the continued regulation of wholesale cellular carriers is the only issue before this Commission.<sup>47/</sup> The Resellers and OCC have in their

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<sup>47/</sup> See, e.g., Tr. at 163, 1281 (retail pricing is not the issue before Department).

Briefs nevertheless continued their effort to expand the scope of this proceeding to include the rates and marketing practices of the retail affiliates of the wholesale carriers and interstate wholesale services. See Appendix at A-29 - A-36. These efforts include challenging certain retail rate levels and the FCC-approved retail practice of bundling cellular equipment with cellular services (Reseller Br. at 5), complaining about the retail advertisements placed by Linx in Yellow Page directories (OCC Br. at 19), alleging that Springwich's failure to provide interstate equal access to interexchange carriers is discriminatory and anti-competitive (OCC Br. at 16), and claiming that the rates charged by Springwich for interstate service are unreasonable. OCC Br. at 16. Clearly, none of these allegations concern in any manner Springwich's jurisdictional intrastate wholesale cellular services, and they are therefore beyond the scope both of this proceeding and of any petition the Department might file at the FCC concerning the jurisdictional rates of Springwich and other wholesale cellular carriers. Accordingly, the Department should reject these claims as irrelevant.

**VI. THE ONLY REMAINING OTHER ARGUMENTS PRODUCED IN SUPPORT OF RATE REGULATION MUST BE DISCOUNTED**

Once the arguments for continued rate regulation already rebuffed by the Department and the FCC are stripped away, only a handful of unsubstantiated allegations of discriminatory or anti-competitive conduct remain. See Appendix at A-39. These

isolated events and complaints do not, however, demonstrate a pattern of anti-competitive or discriminatory conduct as the Resellers and OCC would have the Department conclude, but rather reflect a single reseller's -- Escotel's Cellular's -- current financial difficulties.

The allegations of Escotel Cellular, cited in the Resellers' and OCC's Briefs, are directly contradicted by Springwich's demonstrated support for its resellers and by other evidence presented in the record. The record is replete with evidence of various forms of support provided by Springwich to its resellers to help them grow their businesses, including, but not limited to, reduced roaming charges, free demonstration lines, promotional literature, rate reductions and, in the case of Escotel Cellular and the Phone Extension and several others, financial assistance. Tr. at 1634-36. Unfortunately, Springwich's willingness to support its resellers has been distorted into allegations of anti-competitive conduct.

The Resellers and OCC have attempted to portray Springwich as responsible for insuring Escotel Cellular's success. The FCC, however, has recognized that neither the carrier nor the regulator, but rather the competitive market, must determine that outcome:

we have never guaranteed that any reseller would make a profit. [Citations omitted.] A reseller is only guaranteed an opportunity to resell the cellular services of all facilities-based carriers on the same terms and conditions that carriers provide to their own customers. Profitability for the reseller as well as

for the carrier will be based on the ability to operate successfully in a competitive environment.<sup>48/</sup>

Furthermore, the specific allegations made by the Resellers and OCC are rebutted by the evidence in the record. The evidence demonstrates that the terms of the financing which Escotel Cellular and the Phone Extension voluntarily sought and negotiated with Springwich do not in fact contain the parade of evils testified to by Mr. Escobar.

Claims surrounding Escotel Cellular's financial arrangements with Springwich must be rejected based upon the documentary evidence. See Appendix at A-39. First, rather than restricting Escotel Cellular from switching end user customers from Springwich's wholesale services to Metro Mobile/BAM as Mr. Escobar testified, Tr. at 1056, 1085, the agreements expressly acknowledge that Escotel Cellular and The Phone Extension may have customers on both systems. Tr. at 1681-82. Second, contrary to allegations that Springwich required Escotel Cellular and Mr. Escobar to waive all of their rights, the agreements contain only a standard claims waiver commonly contained in loan documents concerning claims arising from the amounts owing. Tr. at 1682. Third, the agreements did not restrict, nor has Springwich attempted to restrict, Mr. Escobar's participation in Department proceedings. Tr. at 1683. (Indeed, Springwich's policy not to interfere or impede access of resellers to the

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<sup>48/</sup> Resale Policy Order at 1726.

Department (Tr. at 1683), is self-evident from the resellers' active participation in this proceeding and in every other contested proceeding in which cellular matters have been addressed before the Department. See n.2 supra.) Fourth, the confidentiality provisions that Mr. Escobar alleges other resellers have signed, Tr. at 1029, are executed only in security agreements (which not all resellers have executed), and then are included at the request of the reseller. Moreover, such provisions bind Springwich as well as the reseller. Tr. at 1710-11.

Springwich is sympathetic to the fact that Mr. Escobar's personal and corporate financial problems may color his view of Springwich, his largest creditor. As the foregoing examples of his testimony of what the documentary evidence shows, however, Mr. Escobar's view of his relationship with Springwich and his portrayal of its actions must be weighed in light of his financial status. Therefore, in evaluating Mr. Escobar's testimony and the resulting arguments of the Resellers and OCC, the Department should evaluate the credibility of the witness and weigh his testimony accordingly. See *Taylor v. Corkey*, 142 Conn. 150, 154 (credibility of witnesses must be weighed whether contradiction is between different witnesses or differing statements by the same witness); *New Haven Water Co. v. Pub. Util. Comm'n*, 30 Conn. Supp. 149, 151 (weight and credibility of evidence are within the province of the Commission). Further-

more, the Department must bear in mind the FCC's caution that resellers are merely guaranteed an opportunity to compete, not a profit, and that the obligation of carriers is merely to provide non-discriminatory rates and charges to all resellers.<sup>42/</sup>

Claims concerning Springwich's credit policies are also infirm. See Appendix at A-42. Escotel Cellular is the only reseller to protest Springwich's credit policy and to seek a blanket credit policy without any investigation of the validity of the credit request or whether a credit was actually issued to the end user. Despite Mr. Escobar's vehement claims, when requested at the hearing Escotel Cellular could not document the credits it received from Springwich and whether those credits were passed on to end users. The record reveals that the credits given to Escotel Cellular by Springwich have been significant. Tr. at 1684.

OCC also supports Escotel Cellular's claim that all resellers should all be able to activate cellular numbers immediately. OCC Br. at 19-20. The evidence in the record reveals that Springwich is in the process of trialing a new billing system that will allow Springwich to provide all resellers -- the very function Escotel Cellular requests. Tr. at 82; see Appendix at A-44. The trial, however, is not yet complete and it would be imprudent for Springwich to proceed with a roll out of the system until the trial is complete and any

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<sup>42/</sup> *Resale Policy Order*, at 1726.

problems corrected. To transform the holding of such a preliminary trial into evidence of anti-competitive behavior is unreasonable.

### CONCLUSION

There is insufficient evidence in the record to sustain a petition by the Department to continue regulation of wholesale cellular rates. The lack of evidence supporting the call for continued regulation is demonstrated by a review of the eight illustrative forms of evidence that the FCC has identified as pertinent to its examination of in a particular CMRS market. The absence of any persuasive evidence on these factors (or any other factor that the FCC will find relevant) is demonstrated by a comparison of the FCC's factors<sup>50/</sup> and the record in this proceeding.

- (i)       The number of CMRS providers in the state, the types of services offered by CMRS providers in the state, and the period of time that these providers have offered service in the state
- There are multiple CMRS providers in Connecticut today.
  - Springwich has been providing wholesale cellular service in Connecticut since 1985. (Springwich Br. at 25)
  - The Metro Mobile companies began providing intrastate wholesale cellular services in 1987 and were acquired by Bell Atlantic in 1992. (Id.)

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<sup>50/</sup>       Second Report and Order at ¶ 252.

- At the retail level, fifteen resellers offer unregulated retail cellular services to consumers in Connecticut. (Tr. at 48)
- In addition to cellular services, there are over 40 companies provide paging services in Connecticut. (Springwich Br. at 26)
- SMR services also are currently available in Connecticut and tower sites are being acquired by Nextel/MCI for its ESMR service that is expected to be available in Connecticut early next year. (Springwich Br. at 26)

(ii) The number of customers of each CMRS provider in the state; trends in each provider's customer base during the most recent annual period or other data covering another reasonable period if annual data is unavailable; and annual revenues and rates of return for each CMRS provider

- The number of reseller customers of the wholesale cellular CMRS providers have increased from eight to fifteen since 1985. (Springwich TE-11)
- End user subscriber growth in Connecticut over the past five years has averaged in the double digits. (Tr. at 51)
- Subscriber growth has been shared among the resellers but not been limited to the retail affiliates of the wholesale providers. (Springwich Br. at 27.)
- The rates of return of each of the wholesale cellular CMRS providers, when calculated from actual historic audited financial information (and based on the carriers' reasonable projections for future years) are reasonable by all the parties' definition. (Springwich Br. at 32-38)

(iii) Rate information for each CMRS provider, including trends in each provider's rates during the most recent annual period or other data covering another reasonable period if annual data is unavailable

- The rates of the wholesale cellular CMRS providers have continually decreased in Connecticut. In 1993 and during this proceeding in 1994 the price decreases have continued. Both Springwich and Metro Mobile/BAM

recently proposed tariff price reductions. (Tr. at 53; 1635, 1694-95, 1699, 1711)

- The retail cellular market in Connecticut has been characterized by the introduction of new lower-priced service plans and relative stability in basic plan rates, while the networks have continued to provide additional value for the same basic plan price. (Tr. at 844, 893-94)

(iv) **An assessment of the extent to which services offered by the CMRS providers the state proposes to regulate are substitutable for services offered by other carriers in the state**

- Paging services currently provide a level of substitution for cellular services in Connecticut. (Tr. at 56, 395)
- Connecticut also is expected to be one of the first markets for Nextel's ESMR service that will be interoperable with other services including cellular and landline services. Nextel currently is acquiring tower sites in Connecticut and is expected to begin offering service in Connecticut in early 1995. (Springwich TE-11; LF #3; Tr. at 49)
- Broadband PCS also will provide a substitutable service for cellular service. (Tr. at 389-91, 426)
- Connecticut is one of the primary markets for PCS due to its location in the New York metropolitan area.

(v) **Opportunities for new providers to enter into the provision of competing services, and an analysis of any barriers to such entry**

- New providers of CMRS will not face any barriers to entry into the Connecticut market and are likely to aggressively offer CMRS services in the state due to the attractive demographic characteristics of the market, including Connecticut's ranking as the state with the highest per capita income. (Tr. at 52; Springwich TE-11; Springwich Br. at 9-13, 42)
- The Department's jurisdiction over CMRS providers is limited to regulation of wholesale cellular service providers licensed by the FCC. (C.G.S. § 16-250b)

- Other mobile services, including ESMRS and PCS, are not subject to regulation by the Department. (C.G.S. § 16-247c)
  - The Budget Act preempts all state entry regulation of CMRS providers. (Budget Act § 6002(c)(3)).
- (vi) **Specific allegations of fact regarding anti-competitive or discriminatory practices or behavior by CMRS providers in the state**
- The proponents of continued rate regulation of the wholesale cellular carriers have failed to produce any legitimate, sustainable claims of anti-competitive or discriminatory practices or behavior by the wholesale cellular carriers. (Springwich Reply Br. at 6-9)
  - The overwhelmingly majority of practices alleged by the proponents of continued regulation have already been found by the Department or the FCC to be non-discriminatory and in the public interest, including specifically the tiered structure of Springwich's wholesale tariff, the practice alleged by the proponents of an FCC petition to be the most discriminatory practice. (Springwich Reply Br. at 9-29)
  - The remaining allegations of anti-competitive or discriminatory conduct emanate primarily from a reseller in financial distress whose credibility and veracity are in serious question. This anecdotal evidence will be insufficient for the Department to overcome the significant hurdles the Department must overcome at the FCC. (Springwich Reply Br. at 31-35)
- (vii) **Evidence, information, and analysis demonstrating with particularity instances of systematic unjust and unreasonable rates, or rates that are unjust or unreasonably discriminatory, imposed upon CMRS subscribers. Such evidence should include an examination of the relationship between rates and costs. Additionally, evidence of a pattern of such rates, that demonstrates the inability of the CMRS marketplace in the state to produce reasonable rates through**

**competitive forces will be considered  
especially probative**

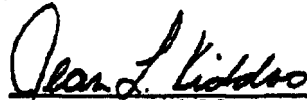
- The record does not contain any evidence of instances of systematic unjust and unreasonable rates or rates that are unjust or unreasonably discriminatory. (Springwich Reply Br. at 21-26)
  - The evidence demonstrates a continuing decline in wholesale cellular rates while network investment by the wholesale carriers continues to increase. (See Springwich Initial Br.)
  - Forecasts predict future price decreases as the product of new competition, new spectrum-based services and the conversion by the wholesale carriers to digital technology. (Springwich Reply Br. at 26)
  - The reasonable rates of return by both carriers demonstrate that rates are reasonable and that the competition between the carriers today and the impending arrival of new competition will continue to produce reasonable rates. (Springwich Reply Br. at 24)
- (viii) **Information regarding customer satisfaction or dissatisfaction with services offered by CMRS providers, including statistics and other information about complaints filed with the state regulatory commission.**
- The continual double digital growth of cellular penetration demonstrates the general level of customer satisfaction with cellular services. (Springwich Br. at 27)
  - The wholesale carriers are continuing to make network investments such as increasing cell density to ensure that resellers are able to retain and grow their subscribership. (Springwich Br. at 28)
  - The record does not contain any evidence of statistics or complaints from cellular end users in Connecticut. The only complaints are from resellers who seek to use the regulatory process to ensure they earn a profit in a controlled regulatory market rather than face their uncertain future in a truly competitive market. This limited objective is a wholly deficient basis for continued rate regulation and inconsistent with the fundamental premise of the Budget Act. (Springwich Br. at 7-8)

FOR ALL OF THESE REASONS, and the reasons set forth in its Initial Brief and this Reply Brief, Springwiche respectfully requests that the Department not petition the FCC for continued authority to regulate the intrastate rates of wholesale cellular service providers.

Respectfully submitted,



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Dated: July 8, 1994

## APPENDIX

APPENDIX  
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## APPENDIX

Faced with a lack of evidence to support continued regulation, the Resellers, OCC and AG have made a broad range of allegations regarding practices of Springwich and Metro Mobile/BAM that they claim are discriminatory or anti-competitive. As demonstrated in Springwich's Reply Brief, closer examination reveals that most of these supposedly "unreasonable," "discriminatory," and "anti-competitive" practices have already been ruled by the Department and/or the FCC to be reasonable and non-discriminatory. Stripped of the challenges to practices authorized by the Department and the FCC, the record does not produce the grim picture painted by the proponents of regulation in their Briefs and clearly does not satisfy the test set forth by Congress and the FCC for state petitions. Nevertheless, Springwich addresses each of the arguments here in the hope that they can be put to rest a final time. In the interest of avoiding cluttering the Reply Brief with a point-by-point discussion of each allegation, this Appendix provides the Department with a summary of the allegations and Springwich's response. As in the Reply Brief, Springwich has arranged the claims into six categories:

- I - Cellular Market Structure
- II - Structural Separation
- III - Billing Practices
- IV - Wholesale Rates
- V - Unregulated Activities
- VI - Miscellaneous

## I. CELLULAR MARKET STRUCTURE

**Allegation:** The market concentration of the wholesale cellular carriers requires continued regulation.

**Response:** The AG contends that the concentration in the wholesale market is attributable to two factors, both of which have already been recognized by the FCC as an insufficient basis for rate regulation -- (1) the presence of only two wholesale cellular providers; and (2) the lack of other fully substitutable CMRS for cellular services. The AG ignores, however, several important factors in advocating market concentration as the basis for a state petition. First, the AG ignores the competition which currently exists between the two cellular carriers. Second, the AG ignores the testimony that shows that existing paging services are in fact often substituted for certain or all cellular service because of their lower cost. See, e.g., Tr. at 56, 395. Third, given the duopoly structure established by the FCC for cellular services, the market is as competitive as the FCC law allows, as demonstrated by the fact that the Band A carrier in Connecticut, Metro Mobile/BAM, has the larger market share.

Congress was well aware of this market concentration when it enacted the Budget Act, as was the FCC when it determined to forbear from rate regulation of cellular carriers. Clearly, the market concentration calculations relied upon by the AG are not unique to Connecticut, since the duopoly structure for cellular services exists nationwide. Moreover, market concentration as